

ORDINANCE NO. 565

AN ORDINANCE CONCERNING DEFACED PROPERTY

WHEREAS, property defaced by gang members by means of painting, drawing, writing, etching, or carving with paint, spray paint, ink, knife or other similar method on public or private property, commonly referred to as "gang graffiti", is an act of vandalism and is against the law; and

WHEREAS, gang members frequently deface property by painting, drawing, writing, etching, or carving gang graffiti on places such as bridges, buildings, signs, benches, telephone booths, doorways, walkways, and alleyways, to advertise their gang, mark their territory, challenge competing gangs, and communicate messages of comradery, rivalry, and death; and

WHEREAS, gang graffiti is the first indication of gang activity and interest in a geographical area, and prompt removal or eradication of such gang graffiti is crucial to law enforcement efforts to control the spread of gang activity and violence because it avoids the attraction of additional graffiti and delivers the message that a community will not tolerate gang graffiti; and

WHEREAS, gang graffiti constitutes a public nuisance which causes depreciation of the value of the defaced property, the surrounding property, and contributes to the deterioration of the neighborhood and the City in general; and

WHEREAS, depreciation of property values and deterioration of neighborhoods leads to economic blight, an increase in criminal activity, and is injurious to the public health, safety, morals and general welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAS ANIMAS, COLORADO, that:

SECTION 1. LEGISLATIVE INTENT. The City Council finds and declares that defacing of public or private property by painting, drawing, writing, etching, or carving, by use of paint, spray paint, ink, knife, or any similar method, commonly referred to as "gang graffiti", constitutes a serious and growing menace, injurious to the public health, safety, morals, and general welfare of the residents of the City; that gang graffiti contributes substantially to the spread of gang activity, violence and crime; and that prompt eradication of gang graffiti is one measure to

control the spread of gang activity, violence and crime, prevent additional accumulations of gang graffiti, and promote the public health, safety, morals and general welfare of the residents of the City.

SECTION 2. DEFINITIONS. The following definitions shall apply when used in this Ordinance:

- (A) "Gang Graffiti" means the defacing of public or private property by members of gangs by means of painting, drawing, writing, etching, or carving with paint, spray paint, ink, knife, or any similar method.
- (B) "Gang" means a group of three or more individuals with a common interest, bond, or activity characterized by criminal or delinquent conduct.
- (C) "Owner" and "property owner" means any person owning real property in the City as evidenced by the tax records of Bent County, Colorado.

SECTION 3. DECLARATION OF PUBLIC NUISANCE. All property defaced by gang graffiti which is visible to public view is hereby declared to be a public nuisance and in the interest of public health, safety, morals, and general welfare, shall be abated as set forth herein.

SECTION 4. CONCURRENT REMEDIES. These abatement procedures for defaced property shall not be exclusive and shall not restrict the City from concurrently enforcing other City ordinances, or pursuing any other remedy provided by law.

SECTION 5. ENFORCEMENT. The Chief of Police shall be responsible for enforcement of this Ordinance. After notice of the violation to the property owner, as set out in Section 6 herein, the Chief of Police is authorized to commence the abatement procedure provided herein and pursue any other remedy provided by law.

SECTION 6. NOTIFICATION OF NUISANCE.

- (A) The owner of any property defaced by gang graffiti, which is located within this municipality, shall be given written notice to abate the public nuisance on the owner's property by removal or eradication of the gang graffiti within ten days after service of the notice. Such notice shall be by personal service to the owner, or by posting the notice on the defaced property together with written notice being mailed to the owner by first class mail, postage prepaid.

(B) The notice to the property owner shall direct the owner to remove or eradicate the gang graffiti from the property within ten days after service of the notice. The notice shall contain:

- (1) The location of and a description of the violation;
- (2) A demand that the owner remove or eradicate the gang graffiti from the property within ten days after service of the notice;
- (3) A statement that the owner may voluntarily agree to immediate removal or eradication of the gang graffiti, with the first \$30.00 in material cost to be paid by the City, if the property owner eradicates the nuisance within ten days and if the owner provides the manpower to eradicate the graffiti. Failure to comply with the requirement within the time frame set forth herein shall thereafter alleviate the City from any further responsibility for purchase of materials as described herein.
- (4) A statement that the owner's failure or refusal to remove or eradicate the gang graffiti may result in abatement by the City, in addition to any other available remedies, and the costs of such abatement, together with an additional fee of seventy-five dollars (\$75.00) for inspection and incidental costs, may be assessed as a lien against the property, and collected in the same manner as real estate taxes against the property;
- (5) A statement that if the costs of abatement plus the seventy-five dollars (\$75.00) fee for inspection and incidental costs is not paid to the City within thirty (30) days after notice to the property owner of costs owed to the City, the amount owed will be certified to the County Treasurer and an additional seventy-five dollars (\$75.00) will be assessed for administrative and other incidental costs incurred in certifying said amount to the County Treasurer; and
- (6) A statement that the owner may make written demand for an administrative abatement hearing before the Mayor, provided the written demand is made within five (5) days after service of the notice, and provided the written demand for a hearing contains the owner's current address and a telephone number where the owner can be reached between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

Written demand for a hearing shall be sent to the Mayor of the City of Las Animas, P. O. Box 468, Las Animas, Colorado, 81054.

SECTION 7. ABATEMENT PROCEDURE. If the owner of property defaced by gang graffiti fails or refuses to remove or eradicate the gang graffiti as directed within the time permitted, and has not made written demand for an administrative abatement hearing, the Chief of Police shall notify the Mayor of the violation. The Mayor may then cause the gang graffiti to be removed or eradicated by City employees or private contractor, and such persons are hereby expressly authorized to enter upon such property for that purpose, proceeding with due care and without any unnecessary destruction of property.

SECTION 8. ADMINISTRATIVE HEARING.

- (A) Upon receipt of a written demand by the property owner for an administrative abatement hearing, the Mayor shall set a hearing which shall be held within five (5) days after receipt of the demand. Notice of the hearing date and location shall be mailed to the owner at the address listed in the written demand.
- (B) At the administrative abatement hearing, the Mayor shall hear such statements and consider such relevant evidence as may be offered by the Chief of Police, code enforcement officers, the owner of the property, or any other witness. The property owner and the City of Las Animas may be represented by legal counsel at such hearing. The Mayor shall make written findings of fact based upon the evidence offered at the hearing regarding the violation and shall determine whether the gang graffiti shall be removed or eradicated. The Mayor shall within five (5) days after the hearing issue a written order stating whether a violation exists on the property in issue. If the Mayor finds a violation does exist and the gang graffiti shall be removed, the order shall direct the owner of the property to remove or eradicate the gang graffiti. The written order shall be mailed to the property owner by first class mail, postage prepaid.
- (C) If an order issued by the Mayor directing an owner to remove or eradicate gang graffiti has not been complied with within seven (7) days after its issuance, the Mayor may cause the gang graffiti to be removed or eradicated by the City employees or private contractor and all costs associated with such removal or eradication shall be charged to the owner of the property. Persons designated by the City to remove or eradicate the gang graffiti are expressly authorized to enter upon the property for that

purpose, proceeding with due care and without unnecessary destruction of property.

- (D) Any property owner who fails to comply with such an order may be charged with the costs and expenses incurred in the removal or eradication of the graffiti. Costs and expense shall include costs of removal, inspection fees, postal charges, attorneys fees to enforce or collect such costs, legal expenses, and other costs or expenses incurred by the City as a result of the enforcement action.
- (E) The order of the Mayor shall be subject to review by Court action, in accordance with Rule 106 of the Colorado Rules of Civil Procedure.
- (F) A record of hearings before the Mayor shall be kept, whether by electronic transcription, secretarial minutes or otherwise and such records shall be kept in the custody of the City Clerk for a period of one year following the date of the hearing and shall be made available for transcription as may be required. The costs of any transcription shall be paid by the person or entity requesting the transcription.

SECTION 9. COSTS AND CHARGES.

- (A) Except as provided in Section 6, the property owner shall be liable for and pay and bear all other costs and expenses of the graffiti removal or eradication, including reasonable attorney's fees for costs of collection, which costs and expenses may be collected by the City in any action at law, referred for collection by the City Attorney on a contingency basis, in the City Attorney's discretion, collected in connection with an action to abate a nuisance, or assessed against the property as hereinafter provided.
- (B) As additional "costs", if the graffiti is not removed or eradicated within the time stated in the notice, the costs of such removal or eradication, together with an additional fee of seventy-five dollars (\$75.00) for inspection and incidental costs, may be assessed as a lien against the property pursuant to the terms of this chapter, and collected in the same manner as real estate taxes against the property. If the cost of graffiti removal or eradication plus the seventy-five dollar (\$75.00) fee for inspection and incidental costs is not paid to the City within thirty (30) days, the amount owed will be certified to the County Treasurer as set forth in subsections (d) and (e), and an additional seventy-five dollars (\$75.00) will be assessed for administrative and

other incidental costs incurred in certifying said amount to the County Treasurer. If the owner of the property is not personally served with a copy of such notice, then a copy of such notice shall be mailed by registered or certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of Bent County, Colorado, at the address of such owner as therein shown.

- (C) If after the expiration of the period of time provided for in the notice, or as extended by the Chief of Police for good cause, costs or expenses are incurred by or on behalf of the City in the removal or eradication of graffiti, or in connection with such removal or eradication and the costs are not otherwise collected, then the Mayor may thereafter certify to the City Clerk the legal description of the property upon which such work was done, together with the name of the owner thereof as shown by the tax rolls of Bent County, Colorado, together with a statement of the work performed, the date of performance, and the costs thereof.
- (D) Upon receipt of such a statement from the Mayor, the City Clerk shall mail a notice to the Owner of the premises as shown by the tax rolls, at the address shown upon the tax rolls, by registered or certified mail, notifying such owner that work has been performed pursuant to this ordinance, stating the date of performance of the work, the nature of the work and demanding payment of the costs thereof (as certified by the Mayor, together with a fee of seventy-five dollars (\$75.00) for inspection and other incidental costs in connection therewith. Such notice shall state that if said amount is not paid within thirty (30) days of mailing the notice, it shall become an assessment on and a lien against the property of the owner, describing the same, and will be certified as an assessment against such property in the amount set forth in subsection (b) of this section, together with an additional fee of seventy-five dollars (\$75.00) for administrative and other incidental costs incurred in certifying said amount to the County Treasurer, and the above-mentioned assessments will be collected in the same manner as a real estate tax upon the property.
- (E) If the City Clerk does not receive payment within the period of thirty (30) days following the mailing of such notice, the City Clerk shall certify to the County Treasurer the whole cost of such work, including a charge of seventy-five dollars (\$75.00) which is the total amount owing for inspection costs, administrative costs and other incidental costs in connection therewith as set

forth in subsections (b) and (d) upon the lots and tracts of land upon which the graffiti was removed or eradicated. The County Treasurer shall collect the assessment in the same manner as other taxes are collected.

- (F) Each such assessment shall be a lien against each lot or tract of land until paid and shall have priority over other liens except general taxes and prior special assessments.

SECTION 10. ANNUAL APPROPRIATIONS. In order to fund the requirements of Section 6(B)(3), the City Council shall make annual appropriations therefore. If unfunded in any calendar year, or if the appropriated funds are totally expended, then Section 6(B)(3) shall become inoperative until the City Council appropriates additional funds.


ADOPTED this 11th day of April, 1995.

PASSED this 9th day of May, 1995.

CITY OF LAS ANIMAS


Keith Varner, Mayor

ATTEST:


Leslie J. Uncel, City Clerk

